

CEQA FAQs

CEQA requirements are unique to each project. The answers provided below are applicable to almost all projects; however, there may be unique circumstances for a particular project that require a different response.

The State Water Board is a Responsible Agency under CEQA and must make findings based on its review of the environmental documents submitted by the Lead Agency. This applies for all projects implemented with State Water Board funding.

1. What is the definition of a Lead Agency?

A Lead Agency is the public agency that has the principal responsibility for carrying out or approving a project that may have a significant effect upon the environment. The Lead Agency typically also has the principal responsibility for preparing CEQA documents.

2. How do we determine the Lead Agency for projects that must address CEQA?

In almost all cases, the Lead Agency is the public agency receiving a grant to complete a project. If the grant recipient is a private entity, the Lead Agency is the public agency with the principal responsibility for supervising or approving the project as a whole. For more detailed information, please refer to Section 15051(b) of the CEQA guidelines or contact a member of the Environmental Review Team.

3. Can a non-government agency (e.g. non-profit organization) be the Lead Agency?

No, the Lead Agency must be a government agency. However, this does not relieve the grant recipient of the responsibility of meeting all grant terms including producing required CEQA environmental documents.

- a. The Lead Agency is the public agency with the principal responsibility for supervising or approving the project as a whole.
- b. The funding agency could become the Lead Agency if no project approvals are needed from other local or state agencies.
- c. The grant recipient or consultant needs permission from the Lead Agency to file the required environmental documentation with the State Clearinghouse.

The Grant Manager has the responsibility to determine whether the project is subject to CEQA and whether there is an appropriate exemption. The Project Director is required to provide the Grant Manager CEQA information for verification.

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4. What is the responsibility of the Lead Agency regarding CEQA?

The Lead Agency must prepare environmental documents or determine that CEQA does not apply.

- a. Does the work meet the definition of a “project” under CEQA?
- b. Is the project exempt from CEQA? Are there applicable categorical or statutory exemptions? Does the Lead Agency need to complete an environmental document for the project? (e.g., Initial Study, Negative Declaration, or Environmental Impact Report)
- c. If CEQA is required, the Grant Manager is responsible for insuring that all necessary internal State Water Board reviews are completed prior to the grant recipient initiating any activities that may have an environmental impact.

5. How does a public agency determine whether an activity is a “project” under CEQA?

CEQA defines a “project” as an activity that has potential for a direct physical change or a reasonably foreseeable indirect physical change in the environment, and

Activity involves a discretionary approval and

- Discretionary approvals require the exercise of judgment or deliberation.
- Ministerial approvals require little or no judgment by a public official and are not projects.

Activity is one of the following types of activities:

- Activities directly undertaken by a public agency including public works construction activities, clearing or grading of land, improvements to existing public structures, enactment and amendment of zoning ordinances, and adoption and amendment of local general plans.
- Activities that are supported (in whole or in part) by a public agency, which include contracts, grants, subsidies, loans, or other assistance from a public agency.
- An activity involving the public agency issuance of a lease, permit, license, certificate or other entitlement for use by a public agency.

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6. How can a public agency determine whether a project is exempt under CEQA?

There are two types of exemptions. The CEQA Guidelines referenced below can be accessed on-line through the web address provided in question #18.

a. Is the project statutorily exempt?

- Statutory exemptions are descriptions of types of projects for which the California Legislature has provided a blanket exemption from CEQA procedures and policies.
- Statutory exemptions are found in various places in the California Code.
- A comprehensive source of statutory exemptions is found in Article 18 of the CEQA Guidelines. Most of them are listed and summarized in Section 15282 of the Guidelines.

b. Is the project categorically exempt?

- Categorical exemptions are descriptions of types of projects the Secretary of the Resources Agency has determined do not have a significant effect on the environment.
- Categorical exemptions are found in Article 19 of the CEQA Guidelines
- Unlike statutory exemptions, categorical exemptions are not absolute. There are exceptions to the exemptions depending on the nature or location of the project (Section 15300.2, CEQA Guidelines).

7. Do all grant recipients receiving State Bond Funds have to address CEQA?

All grant recipients must address CEQA.

- a. If the grant activity is not considered a “project” under CEQA, the grant recipient will provide the Grant Manager a rationale and the section in CEQA that indicates why the activity is not a “project.”
- b. Under some circumstances the project may be approved under a statutory or categorical exemption from CEQA. In these instances, the grant recipient must provide the Grant Manager:
 - Notice of Exemption filed with the County Clerk; and
 - Copy of Resolution adopting the document.

Categorical Exemptions cannot be used if the project is in an environmentally sensitive area.

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8. What is the process for negative declarations and other less intensive environmental reviews and when do these reviews apply?

If the Lead Agency has determined that project activities will have no significant impact to the environment, they may file a Negative Declaration for public review through the State Clearinghouse. If some impacts are identified but clearly can be mitigated to a less significant level, then a Mitigated Negative Declaration maybe filed for public review through the State Clearinghouse.

9. Who files CEQA documentation with the State Clearinghouse?

Anyone can file environmental documents with the State Clearinghouse. Typically the Lead Agency prepares and files the environmental documentation. However, if preparation of the environmental documents is contracted out, the contractor would file the documents. Additionally, the State Water Board makes its own CEQA findings and files a Notice of Decision with the State Clearinghouse.

10. CalFed says that the grantees can tier off the CalFed PEIR. How do they do this and how do we know they have done it correctly?

The Program level EIR that CalFed has produced is considered a tier 1 document. Under CEQA, a Lead Agency may tier off a PEIR and produce a tier 2 document (project specific). The environmental impacts addressed in the CALFED document (tier 1) do not need to be discussed in detail in the project specific document (tier 2); hence, the benefit of tiering. The State Water Board's Environmental Review Team will determine the adequacy of the tier 2 document.

11. Many planning grants may lead to an actual project (subject to CEQA) after the planning grant is completed. When do we suggest the group develop an EIR for their project area/watershed?

A program level EIR may be developed at any time during the planning process. Note that CEQA is intended to provide information for the planning process. Understanding potential environmental impacts early will make them easier to avoid.

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12. Is project segmenting an acceptable practice?

Example: A CRMP receives grants from various entities to do projects like alternate water sources, cattle exclusion fencing, ranch plans, etc. Since these have been dealt with as individual projects on private land the group has not done CEQA. In this case, an agency has not questioned whether the group is piecing the projects to avoid CEQA.

This is a good example of what is termed project segmenting under CEQA, and it is not an acceptable practice because it avoids the CEQA public review process. For help determining whether an agency is segmenting a project, please contact the Environmental Review Team.

13. If CEQA has been approved, but a group has filed a lawsuit challenging it, can work begin or continue pending the outcome of the lawsuit?

That depends upon the Lead Agency, and the potential risk they wish to take in initiating or continuing the proposed project. Legally they can continue to do work until the judge hearing the case tells them otherwise.

14. Do CEQA requirements apply when projects are supported by federal funding through the Clean Water Act 319(h)?

Yes. The State Water Board distributes the 319(h) funds making it a Responsible Agency under CEQA. In addition, since the federal government is the initial source of the funds NEPA requirements may apply. The Lead Agency can produce a joint CEQA/NEPA document.

15. When a project is funded by the State Water Board but located on federal land (e.g. national park) do CEQA requirements apply?

Yes. Any project funded by the State Water Board is subject to CEQA, regardless of location. A project on federal land, requiring a federal discretionary permit, entitlement, authorization, or receiving federal funding will most likely also be subject to NEPA.

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16. What are the requirements for scoping meetings?

Changes to the CEQA Guidelines in 2004 clarify the issue of when scoping meetings are required. Most projects won't meet the criteria of significance outlined in the statute; therefore a scoping meeting won't be required.

CEQA Guidelines, Section 15082(c)(1): For projects of statewide, regional or area-wide significance pursuant to Section 15206, the Lead Agency shall conduct at least one scoping meeting.

CEQA Guidelines, Section 15206 is quite extensive. In summary, it refers to:

- Projects such as general plans; elements, or amendments (where EIR is prepared)
- Projects that could cause significant effects extending beyond the city or county in which the project would be located;
- Anything that cancels a Williamson Act open space contract;
- Any EIR for a variety of environmentally sensitive areas (e.g. Lake Tahoe basin, Suisun Marsh, etc.);
- Any project that affects endangered species and/or or hurts water quality,
- Any project that interferes with attainment of water quality goals per the area-wide treatment plan, and
- Certain projects near nuclear power plants.

CEQA Guidelines, Section 15202(a): CEQA does not require formal hearings at any stage of the environmental review process. Public comments may be restricted to written communication.

17. Can I get information from the State Clearinghouse about submitted environmental documents?

The State Clearinghouse has an online database that includes information about all documents that have been submitted for public review. The online project information includes a specific contact person from the Lead Agency. Contact that representative directly to request a copy of an environment document.

The State Clearinghouse link is <http://www.ceganet.ca.gov/QueryForm.asp?>. The Web site allows you to find documents using the following search options:

- Clearinghouse Number
- Date Range
- Project Location (city or county)
- Keyword
- Lead Agency
- Reviewing Agency
- Document Type

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18. Is there a website for CEQA?

Yes. The California Resources Agency has a website titled California Environment Resource Evaluation System (CERES). The web address for the CERES home page is <http://ceres.ca.gov>. You can link to the CEQA website from this home page.

The direct link to the CEQA website is <http://www.ceres.ca.gov/ceqa>. The CEQA website includes a variety of resources including CEQA Statute, Guidelines, Summary & Overview, Frequently Asked Questions, and a case law search engine.

The direct link to the CEQA Guidelines is http://ceres.ca.gov/topic/env_law/ceqa/guidelines

There is a comprehensive list of CEQA term definitions in Chapter 2.5 of the Statutes. You can select the "Statute" link on the CEQA website. The direct link to the Statute definitions is http://ceres.ca.gov/ceqa/stat/Ch_2.5.html.